ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0296; FRL-9386-01-R9]

Air Plan Approval; California; Los Angeles-South Coast Air Basin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the South Coast Air Quality Management District (SCAQMD or "District") portion of the California State Implementation Plan (SIP). We are also determining that the submitted SIP revision fulfills the District's and the State's commitment to adopt and submit a specific enforceable contingency measure to address Clean Air Act (CAA or "Act") requirements for the 2006 24-hour and 2012 annual national ambient air quality standards (NAAQS) for fine particulate matter ($PM_{2.5}$) in the South Coast air basin.

DATES: This rule is effective on [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0296. All documents in the docket are listed on the *https://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the

FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone at (415) 972-3964 or by email at *vagenas.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to the EPA.

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I. Proposed Action

On May 20, 2021, the EPA proposed to approve all but paragraphs (g) and (k) of the following rule into the California SIP.[1]

TABLE 1 - RULE ADDRESSED BY EPA PROPOSAL

Local Agency	Rule #	Rule	Amended	Submitted
SCAQMD	445	Wood-Burning Devices (except paragraphs (g) and (k))	October 27, 2020	October 29, 2020

We proposed to approve this rule, excluding paragraph (g) (Ozone Contingency Measures) and paragraph (k) (Penalties), based on a determination that it complies with CAA requirements for enforceability and SIP revisions in CAA sections 110(a)(2) and 110(l) and fulfills commitments that the State and District previously submitted to meet the requirements of CAA section 110(k)(4). Our proposed action contains more information on the rule and our evaluation.

[1] 86 FR 27346.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment letter from the Center for Biological Diversity (CBD). We respond to CBD's comments below.

Comment 1: CBD stated that the EPA should consider the air pollution impacts of the alternative sources of heat people use when a curtailment is in effect. CBD claimed that "it is arbitrary to assume that people will simply go without heat when" a curtailment for wood burning devices is in effect and that "[m]ost likely people will use very inefficient heat devices like electric or propane space heaters" as a replacement source of heat. CBD contended that the EPA "must consider the $PM_{2.5}$ emissions this substitute heating will cause when qualifying the $PM_{2.5}$ reductions from this contingency measure" and must rely on the "net savings" (i.e., the emissions reductions from wood stove curtailment minus the emissions increase from replacement heat) in calculating the emissions reductions from the contingency measure.

Response 1: These comments are outside the scope of this rule because they pertain to the quantification of $PM_{2.5}$ emissions reductions to be achieved by the submitted contingency measure.[2] We are not reevaluating in this action our bases for concluding that Rule 445, if revised consistent with the District's commitments, would satisfy the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014 for the 2006 and 2012 $PM_{2.5}$ NAAQS, as described in our July 2, 2020 proposal on the 2016 $PM_{2.5}$ Plan. As we explained in our May 20, 2021 proposed rulemaking, our action is limited to approving Rule 445, as amended October 27, 2020, into the SIP based on our conclusion that the amended rule meets the requirements for enforceability and SIP revisions in CAA sections 110(a)(2) and 110(l) and fulfills the State and District commitments that provided the basis for our November 9, 2020

[2] We assume the commenter's statement that the EPA must consider the $PM_{2.5}$ emissions that substitute heating will cause "when qualifying the $PM_{2.5}$ reductions from this contingency measure" was intended to refer to the *quantification* of the emission reductions to be achieved by the measure.

final rule conditionally approving the contingency measure element of the 2016 $PM_{2.5}$ Plan.[3] Comments pertaining to the quantification of emissions reductions to be achieved by Rule 445 for $PM_{2.5}$ contingency measure purposes are, therefore, outside the scope of this rule.

As we explained in our proposed rulemaking, we previously approved portions of California's SIP submission to address the CAA's "Moderate" area requirements for the 2012 $PM_{2.5}$ NAAQS in the South Coast nonattainment area ("2016 $PM_{2.5}$ Plan"). As part of that action, the EPA conditionally approved the contingency measure element of the 2016 $PM_{2.5}$ Plan as meeting the applicable requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2006 $PM_{2.5}$ NAAQS and the 2012 $PM_{2.5}$ NAAQS.[4] Our conditional approval of the contingency measure element of the 2016 $PM_{2.5}$ Plan for these NAAQS was based on specific commitments by the District and CARB to adopt and submit, within a specified timeframe, revisions to District Rule 445 ("Wood Burning Devices"), to lower the rule's mandatory curtailment threshold by specified amounts upon any of the four EPA determinations (i.e., "findings of failure") listed in 40 CFR 51.1014(a).[5] Our proposed rulemaking to approve and conditionally approve the 2016 $PM_{2.5}$ Plan for purposes of these NAAQS, which published July 2, 2020, provided our evaluation of the District's quantification of the emissions reductions to be achieved by the specified revisions to Rule 445, and our rationale for concluding that the State's timely submission of revised Rule 445 would satisfy the contingency measure requirements in CAA section 172(c)(9) and 40 CFR 51.1014 for the 2006 and 2012 $PM_{2.5}$ NAAQS.[6] We received no public comments that were germane to our proposal, and on November 9, 2020, we finalized this proposal without change.[7]

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[3] 86 FR 27346, 27348. We note that the Ninth Circuit Court of Appeals recently remanded an EPA rulemaking that relied on a rationale and interpretation of the contingency measure requirement in CAA section 172(c)(9) that the court found to be arbitrary and capricious. *Ass'n of Irritated Residents v. EPA,* 10 F.4th 937 (9th Cir. August 26, 2021). The EPA is currently reviewing this decision, evaluating our November 9, 2020 final action conditionally approving the contingency measure element of the 2016 $PM_{2.5}$ Plan, and considering what remedial steps are appropriate to comply with CAA requirements in light of the decision.
[4] 86 FR 27346, 27347 (citing prior final action on 2016 $PM_{2.5}$ Plan at 85 FR 71264 (November 9, 2020)).
[5] 86 FR 27346, 27348 (May 20, 2021).
[6] 85 FR 40026, 40049-40050 (July 2, 2020).
[7] 85 FR 71264, 71266 (November 9, 2020).

The commenter's concern appears to rest on the assumption that significant numbers of residents using wood-burning devices as their sole source of residential heat[8] will be compelled by the rule to switch to more inefficient sources of residential heat. We have no information indicating that the SIP revisions that we are approving will result in such a large scale shift.[9] Rule 445 entirely exempts wood-burning devices used as the sole source of heat in a residential or commercial property and wood-burning devices used in low-income households from its curtailment provisions.[10] Additionally, according to the District, the additional number of No-Burn days resulting from the June 5, 2020 amendments is expected to be small (about 12 days) during the wood-burning season, and the cost impacts on the general public are also expected to be minimal as wood-burning devices in the South Coast air basin are primarily used "for aesthetic purposes."[11]

Comment 2: CBD stated that the EPA must consider, in its Clean Air Act section 110(l) analysis, "all of the air pollution from the replacement heating" that people will use as a result of the wood-burning curtailment provisions in Rule 445. For example, the commenter stated, "will the increased electric demand from electric replacement heat cause or contribute to additional NO_X NAAQS violations near the fossil fuel burning peaking plants meeting this increased demand." The commenter further asserted that "[r]elying on monitoring data to say [there] is no NO_X problem would be arbitrary as the NO_X ambient monitoring network is woefully inadequate to determine if peaking fossil plants are causing NO_X [NAAQS] violations."

Response 2: We disagree with the commenter's suggestion that, for purposes of the limited revisions to Rule 445 at issue in this action, CAA section 110(l) requires the EPA to consider all of the air pollution that might result from use of replacement heating sources due to

[8] "Sole source of heat" is defined in Rule 445 as the only permanent source of heat that is capable of meeting the space heating needs of a household.
[9] As a separate matter, we acknowledge and support California's policy shift toward the usage of higher efficiency and lower carbon technologies, such as heat pumps.
[10] Rule 445 (as amended October 27, 2020), subdivision (i) (exempting, inter alia, "[r]esidential or commercial properties where a wood-burning device is the sole source of heat" and any "low income household" from the mandatory curtailment provisions in subdivisions (e), (f), and (g)).
[11] SCAQMD, "Final Staff Report, Proposed Amended Rule 445 – Wood-Burning Devices," June 5, 2020, 19.

implementation of all of the curtailment provisions in Rule 445. Section 110(l) of the CAA prohibits the EPA from approving a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress" or any other applicable requirement of the CAA. As we explained in our proposed rulemaking, the EPA approved an earlier version of Rule 445 into the SIP on September 26, 2013.[12] On June 5, 2020, the District amended Rule 445 to add lower mandatory wood-burning curtailment provisions in subdivision (f) to be implemented as $PM_{2.5}$ contingency measures upon a determination by the EPA that any of the four failures listed under 40 CFR 51.1014(a) has occurred.[13] The June 5, 2020 amendments to Rule 445 also extended the geographic scope of the mandatory wood-burning curtailment provisions to the entire South Coast air basin on any day for which the $PM_{2.5}$ forecast at a "source receptor area" (SRA) in the air basin exceeds the forecast threshold.[14] The District adopted further amendments pertaining to ozone contingency measures on October 27, 2020, which the EPA is not acting on at this time, but retained the Rule 445 amendments adopted June 5, 2020, unchanged.[15] Thus, the only SIP revisions that we are approving are those amended provisions of Rule 445 initially adopted on June 5, 2020, and retained in the October 27, 2020 amended rule – i.e., the new $PM_{2.5}$ contingency measure provisions in subdivision (f) and the extension of the wood-burning curtailment provisions to apply basin-wide. Section 110(l) of the CAA requires the EPA to consider whether these particular SIP revisions would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA; it does not require the EPA to consider all of the air pollution that may result from changes in behavior that may or may not be caused by the

[12] 78 FR 59249 (final rule approving Rule 445, as amended May 3, 2013, into California SIP).
[13] 86 FR 27346, 27347-27348 (May 20, 2021).
[14] The SIP-approved version of Rule 445 (as amended May 3, 2013) applied the wood-burning curtailment basin-wide only when the "source receptor area" (SRA) where the $PM_{2.5}$ forecast exceeded the forecast threshold also contained "a monitoring station that has recorded a violation of the 2006 24-hour $PM_{2.5}$ NAAQS for either of the two previous three-year design value periods." Rule 445 (as amended May 3, 2013), subdivision (6)(B). In all other situations, the wood-burning curtailment applied only in specific SRAs. Id.
[15] The EPA is not acting at this time on the new provisions addressing ozone contingency measures in subdivision (g) of Rule 445 that the District adopted on October 27, 2020. 86 FR 27346, 27347.

District's implementation of the rule as a whole.[16]

The June 5, 2020 amendments to Rule 445 strengthen the SIP by lowering the forecast threshold by 1 microgram per meter cubed each time the $PM_{2.5}$ contingency measure provisions in subdivision (f) are triggered and by prohibiting the use of wood-burning devices basin-wide, rather than only in specific SRAs, whenever the $PM_{2.5}$ forecast at any SRA in the air basin exceeds the forecast threshold. The commenter provides no specific support for the claim that these strengthened aspects of Rule 445 will "interfere with any applicable requirement concerning attainment and reasonable further progress" or any other applicable requirement of the CAA. Given the incremental $PM_{2.5}$ emissions reductions expected to result from the District's revisions to Rule 445, and the absence of any information in the record indicating that implementation of the revised rule will adversely affect air quality or otherwise interfere with CAA requirements with respect to the $PM_{2.5}$ NAAQS, we find this SIP revision an improvement to the SIP for this area.

The commenter's concern appears to relate not to the $PM_{2.5}$ NAAQS, but rather to the NO_2 NAAQS, and potential adverse consequences in the vicinity of electric generating units that could result from increased electricity generation due to these revisions to Rule 445. The commenter did not provide any support for the premise that these specific revisions to Rule 445 would materially elevate NO_X emissions in the South Coast air basin or elsewhere, and the EPA does not anticipate that this would occur as a result of the additional wood-burning curtailment that may be required if the contingency measure provisions in Rule 445 are triggered in the future, given the exemptions in Rule 445. See Response 1.

Finally, comments about the adequacy of the NO_2 ambient monitoring network in the South Coast air basin are also outside the scope of this action. As we explained in the proposed rulemaking, we evaluated Rule 445, as amended October 27, 2020, solely for purposes of

[16] We note also that implementation of revised Rule 445 is not likely to cause a largescale shift to inefficient heating devices given the exemptions in Rule 445. See Response 1.

determining whether it meets the requirements for enforceability and SIP revisions in CAA sections 110(a)(2) and 110(l) and determining whether the State and District fulfilled the commitments that provided the basis for our conditional approval of the contingency measure element of the 2016 $PM_{2.5}$ Plan for purposes of the $PM_{2.5}$ NAAQS.[17] Comments about the NO_X ambient monitoring network and potential violations of the NO_2 NAAQS, therefore, are not germane to this rule.

The EPA notes, however, that it has separately approved the District's 2020 annual network plan submitted to satisfy the requirements in 40 CFR part 58 pertaining to NO_2 air quality monitors.[18] Additionally, the EPA recently conducted a technical systems audit of the SCAQMD's ambient air quality monitoring program, including network management, field operations, quality assurance, and data management procedures, and found no deficiencies in the NO_2 monitoring network.[19]

III. Final Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule, except paragraph (g) (Ozone Contingency Measures) and paragraph (k) (Penalties), into the California SIP. The October 27, 2020 version of Rule 445 will replace the previously approved version of this rule in the SIP. We have determined that the submitted SIP revision fulfills the District's and the State's commitment to adopt and submit a specific enforceable contingency measure to address CAA requirements for the 2006 24-hour fine $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS in the South Coast air basin and, on that basis, we are converting our November 9, 2020 conditional approval to a full approval.

IV. Incorporation by Reference

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[17] 86 FR 27346, 27348.
[18] Letter dated October 28, 2020, from Gwen Yoshimura, EPA Region IX, to Dr. Matt Miyasato, SCAQMD.
[19] Letter dated March 17, 2021, from Elizabeth Adams, EPA, Region IX, to Dr. Matt Miyasato, SCAQMD, and EPA Region IX, "Technical Systems Audit of the Ambient Air Monitoring Program: South Coast Air Quality Management District June 1 – 5, 2020," March 2021.

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the South Coast Air Quality Management District rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq*., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT**

DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: **March 2, 2022**.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(430)(i)(A)(*3*) and (c)(570), to read as follows:

§52.220 Identification of plan-in part.

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(c) * * *

(430) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on September 26, 2013 in paragraph (c)(430)(i)(A)(*2*) of this section and now deleted with replacement in (c)(570)(i)(A)(*1*), Rule 445, "Wood Burning Devices," adopted on May 3, 2013.

* * * * *

(570) An amended regulation for the following APCD was submitted on October 29, 2020 by the Governor's designee as an attachment to a letter dated October 29, 2020.

(i) *Incorporation by reference*. (A) South Coast Air Quality Management District.

(*1*) Rule 445, "Wood-Burning Devices," amended on October 27, 2020, except paragraph (g), "Ozone Contingency Measures," and paragraph (k), "Penalties."

(*2*) [Reserved]

(B) [Reserved]

(ii) [Reserved]

§ 52.248 [Amended]

3. Section 52.248 is amended by removing and reserving paragraph (k).

[FR Doc. 2022-04761 Filed: 3/7/2022 8:45 am; Publication Date: 3/8/2022]